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Supreme Court of the United States.

OCTOBER TERM, 1973.

No. 73-1191

JOSEPH M. HOURIHAN,
PETITIONER,

v.

HAROLD DAKIN ET AL.,
RESPONDENTS.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

JOSEPH M. HOURIHAN, PRO SE,
10 Westerly Street,
Boston, Massachusetts 02130.
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Supreme Court of the United States.

No.

JOSEPH M. HOURIHAN,
PETITIONER,
v.
HAROLD DAKIN ET AL.,
RESPONDENTS.

Petition for a Writ of Certiorari to the United States Court of Appeals for the First Circuit.

The petitioner, Joseph M. Hourihan, respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the First Circuit entered in this proceeding on October 16, 1973.

Opinion Below.

The opinion of the Court of Appeals appears in the Appendix hereto.

Jurisdiction.

The jurisdiction of the District Court and the Appeals Court is cited below.
Jurisdiction of this Court is invoked under 28 U.S.C.A. § 1253, annotation 4, appeal as of right; § 1254, anno. 1,

by writ of certiorari; annot. 4, power of court; annot. 27, power of discretion of court; annot. 3, decisions reviewable —generally; § 2101(c), Supreme Court time for appeal of certiorari, docketing, stay; § 2106, annot. 5, power of court; annot. 8, argument of appeal; annot. 9, change in law or facts.

Questions Presented.

1. Did the District Court and the Court of Appeals have jurisdiction of the subject matter of this case?

2. Does the Complaint state a cause of action?

Statement of the Case.

On November 17, 1971, I filed a religious discrimination complaint with the Boston Naval Shipyard. On page 2 I stated jurisdiction to sue in this Court being invoked under 28 U.S.C. § 1331, 1343, (3 and 4); 1391 (e), to recover damages in excess of $10,000. and on page 3 and 9, I also invoked Executive Order 11478.

On page 1 in my Declaration in Opposition of the Motion to dismiss, filed on April 23, 1973, I stated the Court's jurisdiction under 28 U.S.C. § 1391 (b), 1331, 1343 (3 and 4), 1391 (g and e); and Title VII, Acts of 1964.

I filed a motion of appeal on August 7, 1973, paragraph (4), and prayed the Court to permit me to strike Title VII Act of 1964, from my pleadings.

In regard to Mr. Segal's Defendants' Answer #17 my rebuttal is contained in my brief of September 11, 1973, page 6, paragraph (1). This charge I had made at the start of the investigation I was granted, my charge went unchallenged.

I had proven invidious discrimination against me—that was reason for my religious discrimination complaint to be

accepted and processed by the Administration. I will rely on the facts as stated in my appeal until oral argument, if granted, to furnish details.

My appeal started when I appealed an ineligible rate I was issued for the position in Nevada. The procedure used to review the ineligible rate by the Nevada Depot was discriminatory, unjust, and illegal. Hence the ineligible rate was was upheld.

I was notified by Nevada I must now appeal the ineligible rate as a discrimination complaint at the Boston Naval Shipyard. My case hereby became unique because Mr. Dakin, the pivotal figure in my appeal, remained adamant he had no part in the ineligible rate. Why then did he accept my appeal? In my brief filed on September 11, 1973, conclusion page 18. I will await oral argument, if granted, to render further details.

After Senator Brooke entered my case, my appeal was accepted as a timely complaint by a letter from Mr. DiPasquale on January 27, 1970. Senator Brooke in a letter to me dated June 11, 1970, informs me my administrative means are exhausted and he is unable to offer me any further assistance, this is an untrue statement—my brief page 5, paragraph 3, 4, and 5.

On February 5, 1971, Mr. William P. Berzak informs me my complaint based on religion is accepted as a timely complaint. This same complaint I filed on July 7, 1969, is accepted as timely. Therefore, my complaint is accepted and denied three times as a timely complaint. Whatever happened to my speedy trial? Am I denied due process? These questions went unanswered.

In regard to #82, Defendants' Answer, this is explained briefly in my brief of September 11, 1973, page 4, paragraphs (3 and 4). I will await oral argument to point out the discrepancies in the rest of these answers.

Mr. Hurley was the staffing specialist from the Portsmouth Naval Shipyard, the investigator of my appeal. The pages concerning the overtime denial of my appeal are conveniently missing from Mr. Segal's exhibits. However, on page 6, paragraphs 7 and 10 of said report, this investigator does readily admit I was denied three overtime days. The reason given by my supervisor in his opinion was I was not needed on the job. This fact was also stated in my brief of September 11, 1973, pages (3 and 4), paragraphs 5 through 8. I had also explained these facts in my motion of June 4, 1973, on page 4 through 6, again in my motion of June 11, 1973. The charge went unchallenged.

The ineligible rate I had received for the position in Nevada could never be justified. Had the government at the onset admitted this, the ensuing fiasco would never have been necessary and many thousands of dollars would not have been squandered to defeat me. The government next caused my appeals to include an appeal for my failure to be permitted to register in the overseas employment program for any other rate except that of General Foreman Engineman. My appeal then included an appeal for being punished by being denied my fair share of overtime work.

I filed a motion to remove Judge Tauro from my case on May 21, 1973, and the motion was granted on May 21, 1973, in the brief I filed on September 11, 1973, page 15, paragraphs (3 and 4). I don't think the Court should have permitted these charges to go unanswered. I will await oral argument to present more details. Appendix p. .

Senator Brooke formed a cabal when he sent one of the letters I sent him to Captain Burk who in turn forwarded my letter to Deputy Gundlach of the office of Civilian Manpower Management (O.C.M.M.) in Washington, D.C. Deputy Gundlach quoted a part of a paragraph in my letter and because the word "Nevada" was not included, my appeal was denied and is unappealable.

It is shocking to me to read the memorandum and order of October 16, 1973, wherein it states:

> "the complaint in this case contains nothing but the most conclusory of charges" Appendix p.

Anyone, much less an appeals court, to make such a ridiculous charge after admitting they had read my complaint and still refused to grant me any relief under any applicable law as I prayed in my complaint (page 23). The decisions rendered are a gross miscarriage of justice that can only be corrected by the issuance of the writ I pray for.

I doubt if there has ever been another decision rendered by Deputy Gundlach before or since my case for such an idiotic reason. This also referenced in my brief, page 11, paragraph (3).

In my brief of September 11, 1973 (pages 3 and 4), I believe I did prove my case, yet the Court ignored these facts.

Before Judge Garrity had rendered his decision, I filed a motion on June 11, 1973, and my brief filed on September 11, 1973, on pages 7 and 8, paragraph (3). I don't think Mr. Segal should have ignored my charge. Also in my brief, page 11 (4), this case I brought to the court's attention in hopes I could have received a like treatment. The letter I had sent to the General Accounting Office on March 17, 1971, and the denial of any assistance to me is a most lengthy exhibit. I will await oral argument to present same.

Regardless of facts presented, Judge Garrity's order of dismissal July 27, 1973, stated opposing memorandum was considered. How the Judge after reading my appeal could ever admit he had read any opposing memorandum and still erroneously dismiss my appeal, page 9, paragraph (1), is to admit the decision to dismiss is a knowingly erroneous decision. My brief, page 14, paragraphs (1 and 2), the Judge had jurisdiction if for only the cause as stated herein. To

remain adamant to dismiss my appeal the erroneous decision is now a gross miscarriage of justice.

In my motion June 10, 1973, I thought I had proven the Court's jurisdiction; in my motion on April 23, 1973 pages 4 through 7, my reasons for being forced to proceed Pro Se; in my brief, pages 6 and 7, paragraphs 2, 3, and 4, I again explained my reason.

I received a motion for summary disposition on September 21, 1973, because it stated my appeal clearly presents no substantial question. My motion to deny, September 28, 1973. The substantial question was, why did Mr. Gabriel abandon the charge of lack of jurisdiction and my failure to state a claim for relief? Also why did he fail to state executive order for dismissal? My motion to proceed upon original papers on August 15, 1973, was granted on August 15, 1973. This is the only motion I filed that was ever acknowledged. I received memorandum and order from the Appeals Court on October 16, 1973. The *Gnotta* v. *United States* case is referenced as grounds to deny my appeal because I imagine I had erroneously stated Executive Order 11478. In my brief, pages 8 and 9, paragraphs 2 through 6, contain my rebuttal to this *Gnotta* case. I made a plea to the Court for mercy for mistakes I was sure to make in my Declaration in Opposition, April 23, 1973, page 2, paragraph 5. This plea is also denied. The memorandum stated:

> "such cannot suffice . . . even with the indulgence granted a pro se litigant."

I was never at any time granted any indulgence from any Boston Court.

In my motion, April 23, 1973, page 3, paragraph 5, herein I point out this Court did show compassion on a complainant because she was pro se. In my brief, page 10, paragraph 1, again I ask for the Court's compassion to no avail. In my

brief page 7, paragraph 3, I believe Mr. Segal should not have permitted my charge to go unchallenged.

Mr. Segal and Mr. Gabriel had displayed a most belligerent attitude toward me. In my brief page 16, paragraph (1). Here, I believe, Mr. Segal should have forced me to prove this charge was true. When Mr. Segal remained silent I think he readily admits my charge is true. In my motion to remove Judge Tauro, May 21, 1973, also went unchallenged.

Mr. Gabriel presented a case to this Court that concerns a squatter's case to 103.2 acres of prime land in Truro, Massachusetts. The claim is against the Government. Mr. Gabriel offers no opposition whatsoever. The man will collect $200,000.00 from the U.S. Parks Department. There can be no doubt Mr. Gabriel spent more of his time and energy to defeat my Civil Rights case than this other case. The case is included in cases on page A.

Senator Brooke sent me his alibi on June 11, 1970. The reason stated is not true. My appeal was again accepted on February 5, 1971. Yet the fact the Senator had stated if there was a way he could help me he would. I submit another case that was heard in Washington in which Senator Brooke did intercede.

I submit another case heard in a Washington Court where a convicted murderer was freed because he was a product of the ghetto of the District of Columbia. I am a product of the ghetto of Roxbury for over fifty years. Senator Brooke's assistance simply intensified my anxieties and frustrations. The case is filed under cases attached hereto.

Reasons for Granting the Writ.

The U.S. Attorney, James N. Gabriel, filed a motion to dismiss on the ground the Court lacks jurisdiction over the

subject matter and the complaint fails to state a claim upon which relief can be granted. In the memorandum in Support of Defendants Motion to Dismiss, on page 2, quotes the damages I sought. Therefore a writ should be issued to review decisions on the issue because of doubt as to the correctness of the facts with a conflict of decisions.

Judge Tauro at the pre-trial hearing on the motion to dismiss, after listening to a long drawnout discussion by Mr. Segal's erroneous reasons to dismiss my appeal. Judge Tauro announced from the bench he had decided to hear my case as Summary Judgment. I filed a motion to remove Judge Tauro on May 21, 1973, included in my brief, page 14, paragraph 3.

I had made a rash decision to cause Judge Tauro's removal. I was issued Judge Garrity's order of dismissal on July 27, 1973. A writ should be issued to ascertain Mr. Segal's unorthodox procedures.

Mr. Gabriel's motion pursuant to Rule 6 of the rules of this Court to dismiss the appeal and affirm the judgment below on the grounds that the appeal clearly presents no substantial question, because there now exists yet another different decision, a writ should be issued to review decisions on the issue because of doubt as to their correctness of facts.

In my motion to deny Motion for Summary Disposition filed on September 28, 1973, I corrected Mr. Gabriel's legal mistake. It is now Rule 6, rather than Rule 12, he should have invoked. This legal mistake has a tremendous effect on my appeal that was denied because I had invoked Executive Order 11478. Mr. Gabriel gets away with legal errors while I am held strictly accountable for my mistake. The rest of the facts stated in my motion I will await oral argument for further discussion. A writ should be issued to correct an erroneous ruling on the particular facts. My

brief, page 10, paragraph (1), I had appealed an erroneous decision from the District Court. In the memorandum Mr. Segal stated:

> "an extensive administrative review revealed no basis for plaintiff's complaint."

This is a downright despicable lie. My brief, pages 3 and 4, paragraphs 2 through 6.

Yet Judge Garrity cites simply the *Gnotta* case to justify his denial of my appeal. The one glaring example of difference between Gnotta's case is he filed an administrative complaint. When Mr. Segal stated in his memorandum, on page 1, that I too filed an administrative complaint this is yet another lie. My brief, pages 7 and 8, paragraphs 3 and 4. The erroneous decision of Mr. Segal's represents a gross miscarriage of justice. A writ will have to be issued to correct this decision because it is unduly harsh in its impact to prevent the administrative of Civil Justice.

All the argument presented in the memorandum while relevant to Gnotta's administrative complaint because of the administrative orders he invoked. Such is not true in my case. The laws I invoked in conjunction with the executive order I had erroneously quoted make the long memorandum most irrelevant to my case. The fact the Civil Service Commission Board of Appeals and Review upheld the discrimination against me. I will wait oral argument to prove how utterly ridiculous was the upholding of the discriminatory decisions against me. In my brief, page 4, paragraph 1, was my opinion of the investigations of my appeal. In my brief, pages 7 and 8, paragraphs 3 and 4, Mr. Segal never answered the charges I had made against him. On page 9, I think a legal problem developed here between Judge Tauro's decision for Summary Judgment and Judge Garrity taking it upon himself also to announce

from the bench he would not hear my case as Summary Judgment. Judge Garrity's reply to my question is also questionable. I believe a writ should be issued to bring about a uniformity of decisions in the Lower Court.

A conflict also exists between Judge Tauro's decision and the Court of Appeals' decision. The Appeals Court failed to use its supervisory powers to review the Lower Court's erroneous decision.

I was also thereby denied my constitutional rights to a fair trial because the decision is final without the Supreme Court's intervention. Therefore, a writ should be issued because the decision below is shockingly wrong and thus presents substantial due process questions.

The motion I filed on May 29, 1973, and also explained in my brief, page 15, paragraph 2, this is discrimination of a continuing nature.

The *Gnotta* case is also explained briefly in my brief, pages 9 and 10, paragraph 3. I will rely on the facts stated in my brief until oral argument if granted. On page 1275, paragraph 2, Gnotta's argument would not be relevant to my case because I did invoke other pertinent laws and therefore the Federal Court could have fashioned an appropriate and effective remedy.

Gnotta was represented by counsel. Yet based on his unproven claim of discrimination, Gnotta was granted a fair trial. There does exist a conflict of decisions between this case and my case. A writ should be issued to insure uniformity of decisions.

On page 1275, paragraph 4 the Court does show compassion for Gnotta irrespective of the fact he is represented by counsel and in paragraph 6, points out errors in Gnotta's appeal. There was no Court that could point any errors in my appeal except the Executive Order I had erroneously invoked. And then the Court dismissed my appeal for one

legal mistake. There does exist a conflict of decision between the Court for *Gnotta* and the Court here.

On page 1276, paragraphs 4 and 5, the Court proves to Gnotta's satisfaction substantial evidence to support the agency's decision. There does exist a conflict of decisions here, not only in the decisions of the Courts but also the decisions between the agencies. I was never shown or proven where I am wrong.

On page 1278, paragraphs 4 and 5, the Court informs Gnotta of laws he should have invoked, 28 U.S.C. 1343 (4). I invoked this law and section and also section 1343 (3). Regardless of laws I had invoked, the fact the Court pointed out further errors in Gnotta's appeal; again a conflict of decisions exists as well as proof the decision to deny my appeal is erroneous at best.

In my application for Court Order, May 29, 1973, the Court had felt compassion because Gnotta was in fact bucking the establishment (page 1275, paragraph 4). I don't think Gnotta was ever discriminated against for such a long period of time as I was. In my brief, page 17, it is most doubtful Gnotta was also so discriminated against by the Court and by the agency. Again a conflict of decisions exists and I had never been shown any compassion whatsoever. My motion, October 5, 1973 is also discrimination against me.

The motion I filed on June 4, 1973, on page 3, paragraph 4, I state facts to prove fraud against the government. My motion of June 11, 1973, I plead to dismiss my appeal, fraud will have been a success if my appeal is denied. In my brief, pages 4 and 5, paragraphs 3 through 7, writ should be issued to ascertain Mr. Gabriel's reason to permit fraud against the government to succeed. A conflict of decisions also exists when the lower courts dismissed my appeal and permitted fraud to go unpunished and unduly.

The case stated in 28 U.S.C. 2106, annot. 8, argument of appeal. Could my mistake also be ruled a gross mistake? Why didn't the court examine the entire record to determine if injustice would be done in dismissing my appeal? A writ should be issued because there is a conflict of decisions between the case cited and my case.

When I had informed Judge Garrity I was attempting to appeal the fact the Municipal Judge refused to render an administrative decision thereby denying my case. When I was forbidden to appeal this decision to the Supreme Court I was therefore stating these facts to prove Judge Garrity had jurisdiction because there was no other court I could turn to for justice, when Judge Garrity denied my appeal was to punish the innocent. I had informed Judge Garrity at his pre-trial hearing of the facts as stated in my brief, pages 6 and 7, paragraphs 2 through 6. Evidently the facts I presented failed to sway Judge Garrity from his erroneous decision. A writ should be issued to review if the denial of my appeal was judicially correct on the particular facts.

The refund I received from the District Court of November, 1973, presents a question that had I not appealed to this Court would I then have received this refund? Was the procedure judicially correct to wait until November, 1973, to receive my refund? A writ should be issued to ascertain the procedure from the District Court.

Conclusion.

I pray this Court to grant me a writ of certiorari because I have been punished enough. I have endured discrimination due to lies and deceptions by the government. All the hearings and investigations I was afforded the results produced can be termed irony in its purest form. To bring

my case to this Court has been slow and very painful to me; according to the laws this is the irony.

Mr. Dakin the pivotal figure in my complaint and the crowd that filled the shadows around him were the ultimate abusers of power. The aim of the government was not just to defeat me but in sending mental and legal giants as opponents was to destroy me by any available scheme.

There has never before been a case brought before this Court where an innocent victim was subjected to invidious discrimination for sixteen years. I had been denied my civil rights, due process, and equal rights and privileges when I have never been considered for any overseas position for any country in the world for the past ten or more years.

The motion I had filed on May 29, 1973, the facts herein stated can only be explained as continuing discrimination of me. As the ineligible rate issued to deny me the right to compete for the position in Nevada. There is no way the additional defendants named herein can anyway possible justify the mark given my application in view of the circumstances.

To deny me a writ will have denied me my life's ambition. I will never be permitted to transfer or seek any promotion from this shipyard and my Navy career will end here in the immediate future. My motions of May 29, 1973, and October 5, 1973, also prove a continuing discrimination of me. My supervisors denied me my civil rights as punishment for having named them in my complaint.

Therefore the petitioner, Joseph M. Hourihan, prays that a writ of certiorari be issued to review the unjust and most unreasonable decision of the Municipal, District and Court of Appeals in view of the apparent harshness of the results entailed is an obvious miscarriage of justcie and also denied me Due Process. The Appeals Court decision to dis-

miss my appeal for the reason stated has so far departed from the accepted and usual course of judicial proceedings and so far sanctioned such a course by the lower court that it calls for an exercise of this court's power of supervision to set the Court below right. For these reason a writ of certiorari should be issued to review the judgment and opinion of the First Circuit.

Respectfully submitted,

JOSEPH M. HOURIHAN, Pro Se.

APPENDIX.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH M. HOURIHAN
v. Civil Action No. 72-3515-T
HAROLD DAKIN, ET AL.

Disqualification
May 21, 1973

TAURO, D. J.

I have reviewed the plaintiff's pro se affidavit requesting that I disqualify myself. The record will demonstrate that plaintiff's conclusions and impressions as to my objectivity are totally without foundation or merit. Having in mind, however, that plaintiff appears pro se, I grant his request that I take no further action in this matter and hereby request the Clerk to have this matter redrawn to another judge.

JOSEPH L. TAURO,
United States District Judge.

Case redrawn to Judge Garrity.
Docket Number is now 72-3515-G.

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

JOSEPH M. HOURIHAN, Plaintiff, CIVIL ACTION
v. No. 72-3515-G
HAROLD DAKIN ET AL., Defendants.

Order of Dismissal
July 27, 1973

GARRITY, J. After hearing and upon consideration of supporting and opposing memoranda filed by the parties,

it is ordered that defendants' motion to dismiss filed April 10, 1973 be allowed and that the case be dismissed for lack of jurisdiction over the subject matter, under principles stated in *Gnotta* v. *United States*, 8 Cir. 1969, 415 F. 2d 1271, *cert. den.* 397 U.S. 934.

W. ARTHUR GARRITY, JR.,
United States District Judge.

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 73-1274.

JOSEPH M. HOURIHAN,
Plaintiff, Appellant,
v.
HAROLD DAKIN ET AL.,
Defendants, Appellees.

Order of Court

Entered: August 15, 1973

Upon motion,

Leave is hereby granted to the parties to proceed upon the original papers of the District Court without reproduction thereof in appendix form; and further,

Leave is hereby granted appellant to proceed upon four (4) reproduced copies of his brief with proof of service of one copy on counsel for the appellees.

By the Court:
DANA H. GALLUP, Clerk
By: FRANCIS P. SCIGLIANO,
Chief Deputy Clerk.

[cc: Mr. Hourihan and Mr. Gabriel.]

UNITED STATES COURT OF APPEALS
FOR THE FIRST CIRCUIT

No. 73-1274.

JOSEPH M. HOURIHAN,
Plaintiff, Appellant,
v.
HAROLD DAKIN ET AL.,
Defendants, Appellees.

Before COFFIN, Chief Judge,
McENTEE AND CAMPBELL, Circuit Judges.

Memorandum and Order

Entered: October 16, 1973

Plaintiff, in a complaint containing 115 paragraphs, has challenged various adverse personnel actions or refusals to act on the part of officials of the Navy, his employer, and other government officials, twenty-six in all. The district court dismissed the complaint for lack of jurisdiction over the subject matter, citing *Gnotta* v. *United States*, 415 F. 2d 1271 (8th Cir.), *cert. denied*, 397 U.S. 934 (1969). Even if sovereign immunity might not be held a complete defense against detailed allegations of discrimination on religious grounds—a point not necessary to decide—the complaint in this case contains but the most conclusory of charges. Such cannot suffice, even with the indulgence granted a pro se litigant.

The judgment of the district court is affirmed under our rule 12.

By the Court:
/s/ DANA H. GALLUP
Clerk.

[cc: Messrs. Hourihan and Segal.]